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Attorney for Plaintiff, Owyhee Produce LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

OWYHEE PRODUCE LLC,

Plaintiffs,

v.

KIMBERLY PEREZ, an individual, MARK  
PEREZ, an individual, EARLY BIRD  
PRODUCE, and DOES 1 through 20, Inclusive,

Defendants.

Case No. C 07-04117 PVT

DECLARATION OF PAUL W.  
MONCRIEF, ESQUIRE IN  
SUPPORT OF CLERK-ENTRY  
DEFAULT JUDGMENT

I, Paul W. Moncrief, Esquire, declare as follows:

1. I am the attorney for the Plaintiff, Owyhee Produce LLC.
2. Defendants Kimberly Perez, Mark Perez, and Early Bird Produce have not appeared in this action and have not responded to the complaint within the time permitted by law.
3. Defendants are not infants, incompetent persons, or persons in military service or otherwise exempted from default judgment under the Soldiers' and Sailors' Civil Relief Act of 1940.
4. A Request to Enter Default is made concurrently herewith.
5. This action involves a claim for damages by Plaintiff Owyhee Produce LLC against Defendants Kimberly Perez, Mark Perez, and Early Bird Produce pursuant to

1 contracts for the sale of produce and likewise pursuant to the Perishable Agricultural  
2 Commodities Act of 1930 as amended, 7 U.S.C. Section 449(c)(5) ("PACA"). Copies of the  
3 unpaid invoices and shipment contracts are attached hereto as Exhibits A-E.

4 6. There is now due and owing under said contracts the total sum of \$59,149.35,  
5 plus prejudgment interest, if awarded, for the following reasons: Plaintiff is the beneficiary of  
6 the floating nonsegregated statutory trust on all of Defendants' perishable agricultural  
7 commodities, all inventories of food or other products derived from perishable agricultural  
8 commodities, and any receivables or proceeds from the sale of such perishable agricultural  
9 commodities or products or assets derived therefrom pursuant to 7 U.S.C. Section 449e(c)(1)-  
10 (4) of PACA due to Defendants' failure to remit payment for commodities received and  
11 shipped to Defendants by Plaintiff.

12 7. The said sum has not been paid.

13 8. Said sum became due and payable as follows:

14 Invoice No. 217259, \$13,169.50, past due after December 18, 2006;

15 Invoice No. 217451, \$6,315.50, past due after November 26, 2006;

16 Invoice No. 217492, \$13,287.85, past due after December 14, 2006;

17 Invoice No. 217493, \$13,372.50, past due after December 17, 2006;

18 Invoice No. 217286, \$13,004.00, past due after January 16, 2007.

19 The Plaintiff respectfully requests that the Court award Plaintiff prejudgment interest  
20 from the dates above as such an award is discretionary in PACA claims pursuant to Middle  
21 Mountain Land & Produce Inc. v. Sound Commodities, Inc., 307 F.3d 1220 (9<sup>th</sup> Cir. 2002).

22  
23 I declare under penalty of perjury under the laws of the State of California that the  
24 foregoing is true and correct.

25  
26 Executed on September 28, 2007

27  
28   
Paul W. Moncrief, Esquire

**PROOF OF SERVICE**

I am employed in the County of Monterey, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 295 S Main Street, Suite 600, Salinas, CA 93901

On the date set forth below, I caused the following document(s) entitled:

**DECLARATION OF PAUL W. MONCRIEF, ESQUIRE IN SUPPORT OF CLERK-ENTRY DEFAULT JUDGMENT**

to be served on the party(ies) or its (their) attorney(s) of record in this action listed below by the following means:

XX **(BY MAIL)** By placing each envelope (with postage affixed thereto) in the U.S. Mail at Johnson & Moncrief, PLC, 295 S Main Street, Suite 600, Salinas, California. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business, correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.

       **(BY HAND-DELIVERY)** By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

       **(BY OVERNIGHT DELIVERY)** By placing with Federal Express and/or UPS a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to Johnson & Moncrief, PLC at the address(es) shown below.

       **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy thereof by facsimile transmission from facsimile number (831) 759-0902 to interested party(ies) of their attorney of record to said action at the facsimile number(s) shown below.

addressed as follows:

Kimberly Perez  
Mark Perez  
Early Bird Produce  
917 Entrada Street  
Soledad, CA 93960

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 3, 2007, in Salinas, California.



Sandra Lee Divens